The Solicitors' Journal

VOL. LXXXVI. **Saturday, December 12, 1942.** No. 50

Current Topics: Workmen's Compensation and the Beveridge Report—The Proposals—Liabilities (War-Time Adjustment) Act—Gifts of Rationed Food — Nominee Shareholding — Far Eastern War Damage — Recent Decisions 369
Coal Act Compensation (*concluded*) 371
Correspondence 372
Obituary 372
A Conveyancer's Diary 373
Books Received 373
Parliamentary News 373
Landlord and Tenant Notebook .. 374
Our County Court Letter 374
To-day and Yesterday 375
Points in Practice 375
Notes of Cases—
Bose *v.* Harris 376
Combex, Ltd. *v.* Cork N. Seals, Ltd. .. 376
McKean *v.* Raynor Bros., Ltd. .. 376
V/O Sovfracht *v.* Gebr. van Udens Scheepvaart en Agentuur Maatschappij 376
War Legislation 377
Rules and Orders 377
Notes and News 378

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*
ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.

Current Topics.

Workmen's Compensation and the Beveridge Report.

OF all the much discussed proposals in the Beveridge Report on Social Insurance and Allied Services, that which interests lawyers most is the suggested "supersession of the present scheme of workmen's compensation and inclusion of provision for industrial accident or disease within the unified social insurance scheme, subject to (*a*) a special method of meeting the cost of this provision, and (*b*) special pensions for prolonged disability and grants to dependents in cases of death due to such causes." While acknowledging that the existing scheme has conferred benefits and has certain merits, the Report states that there are disadvantages which should and could be eliminated by change to a new system. The disadvantages include: (i) The present system rests in the last resort on a threat of litigation and the risk of legal expenses on a scale far exceeding that of the other forms of social security in this country or of compensation for industrial accident or disease in other countries. (ii) No machinery other than that of the trade unions is provided for assisting the employee in presenting his claim, and he often feels, rightly or wrongly, that he is being subjected to improper pressure to reduce his claim or to accept a lump sum settlement, or to go back to work for which he is not fitted. (iii) No complete security is afforded for the payment of compensation. Insurance of the employer against his liability is not compulsory except in the mining industry. (iv) The system fails to secure maintenance of necessary income. The extensively exercised system of lump sum settlement is impossible to justify from the point of view of social security. (v) Demarcation disputes are inevitable if compensation for disabilities has to be provided from different funds by different authorities. (vi) There are differences of principle in defining dependents under workmen's compensation from that adopted for unemployment insurance or for contributory pensions. (vii) Costs of administration are higher in relation to workmen's compensation than they need be or than they are in compulsory social insurance. (viii) The inclusion of certain industrial diseases, as well as accidents, for the purposes of compensation, while necessary in principle, makes the fixing of liability on the individual employer particularly inappropriate, owing to the difficulty of deciding in which particular employment the disease began and the risk that an employee showing signs of an industrial disease may be discharged. (ix) In the forty-five years of its existence the present system has contributed little or nothing to the restoration of the injured employee to the greatest possible degree of production and earning as soon as possible. Post-medical rehabilitation has only just begun to receive practical attention and the extension of medical services at the expense of the employers, recommended by the Holman Gregory Committee more than twenty years ago, has not been adopted. The needs of a workman and his dependents, the Report stated, are the same whether he meets with an accident in the factory or in the street.

The Proposals.

THE Report recognises three strong arguments for distinguishing between disability arising from industrial accident or disease and other forms of disability. First, many industries vital to the community are specially dangerous and should carry special compensation. Secondly, a man disabled in the course of his employment has been disabled while working under orders, and this is not true of accident or other sickness. Thirdly, the employer's liability should be limited to the result of actions for which he was responsible morally and in fact, though not simply by virtue of some principle of legal liability, and therefore special provision should be made for the result of industrial accident and disease, irrespective of negligence. The proposal is therefore made that provision for industrial accident and disease in a unified plan for social security can and should be combined with the advantages of making discriminating provision for the results of industrial accident and disease where these lead to death or prolonged disability. In meeting the costs of industrial disability a combination of methods should be used. In part the risks should be pooled and met by the general insurance contribution, and in part they should be kept separate and placed on employers, in order to give a definite financial incentive to the prevention of accident and disease. There should therefore be a levy on employers in industries scheduled as having materially more than the normal risk of accident or disease in industry as a whole, the levy to be based on the wages paid and the degree of risk. In every scheduled industry a statutory association of employers and employees should be set up to promote safety, rehabilitation and re-employment, and to collect from individual employers their quotas of the total levy required from the industry as a whole. The Report also notes that the existing system of workmen's compensation in Britain compares unfavourably with the systems of other countries, not only in methods, but in relation between the basic rates of compensation and the earnings which have been lost. In the plan for social security it is accordingly proposed that the rate of industrial pension should be two-thirds of the earnings which have been lost, subject to a maximum fixed provisionally at £3, and to a minimum of not less than would have been received as disability benefit. In addition to this, the injured employee will receive children's allowances for all children. The Report does not pretend that the practical working out of its proposals will be anything but difficult. It admits that to many questions final answers cannot be given without further inquiry, but few will be found to disagree with its general proposition that "the fitting of workmen's compensation into the general plan for social security should be accepted in principle."

Liabilities (War-Time Adjustment) Act.

IN answer to a question by Mr. BARTLETT in the House of Commons on 2nd December, the Attorney-General stated that under the Liabilities (War-time Adjustment) Act, protection orders had been made in 681 cases, but in ninety-six of those cases the judge had refused to make an adjustment order and had revoked the protection order. In 358 of those cases an adjustment order had been made. In seven of the cases the court had revoked the adjustment order. The remaining cases were under investigation. Up to 1st July, 1942, schemes had been approved in 123 cases and 121 other applications for schemes were under investigation on that date. Up to that date adjustment officers had given advice and assistance in 1,079 other cases in which an adjustment order was not suitable or was not desired, but figures since 1st July were not available. Returns up to 31st December, 1942, would be available in due course. The Act, said the Attorney-General, has been the means of preserving many people from bankruptcy, and has enabled many traders to continue in business who would otherwise have been compelled to cease trading. In sixteen cases the debtor had carried out the terms of the adjustment order and had been granted an order of discharge. He thought that it would be desirable that the public should have a still wider knowledge of the Act, including the fact that insolvency was not a necessary qualification for obtaining relief under it. Steps had been taken to spread this knowledge, which had not yet had their full effect. The results achieved since the passing of the Act are not substantial, but at least they prove conclusively what could be done if the steps to spread knowledge of the advantages of the Act should be effective.

Gifts of Rationed Food.

In the reply of the Parliamentary Secretary to the Minister of Food to questions in the Commons on 2nd December, the view which was expressed (*ante*, p. 351) that the private exchange and gift of rationed commodities " clearly opens the door to all sorts of black market activities " received official confirmation. Mr. MABANE said that he was aware of two prosecutions in the last few months in which penalties had been imposed for a breach of the regulation which made it an offence to give away rationed foods. Both of those cases illustrated the abuses which might occur if no such regulation existed. The extent to which people entitled to foodstuffs, whether rationed directly or on points, did not take up their full proportion was not perhaps commonly realised. It was not in the public interest to reveal the precise figures, but it was very substantial. It would be seen, therefore, that to permit freely gifts of rationed foods by those who, while entitled to them, did not take up their rations, might open the way to considerable black market activities and might also increase substantially the total amount of foodstuffs required to be imported with a consequent and serious increase of the burden on shipping capacity. There was no desire to interfere with gifts which were entirely innocent in character and there was no intention to authorise prosecutions in connection with such gifts. Careful consideration was being given to the question whether an amendment of the law was desirable and practicable.

Nominee Shareholding.

LITTLE has been heard from official sources concerning nominee shareholding since 28th April, when the President of the Board of Trade said, in answer to a question by Sir JOHN MELLOR in the House of Commons that there was full power under reg. 80 of the Defence (General) Regulations, 1939, to compel the disclosure of the beneficial interests in shares held by nominees, that he was considering with the Home Secretary whether any further action was necessary, and that to begin to modify the Companies Act would be a very complicated business (*ante*, p. 129). The only official utterance on the subject since then was one by the Solicitor-General in the Commons on 6th May, in reply to a question by Sir JOHN MELLOR, that the result of an alteration of s. 101 of the Companies Act (that no notice of any trust shall be entered on the register) would be to cause administrative difficulties for companies, and those were matters of administration of the Companies Act and not of revision of the law (*ante*, p. 135). Reference to our previous topics on this subject discloses that at that time there was some anxiety about nominee shareholdings in newspaper and public utility companies. In the absence of any official action on the matter, it is pleasing to see that the Brazilian Warrant Company has decided to take steps on its own initiative to rectify the position so far as its own affairs are concerned. Bearing in mind that the present calls on public time rule out the possibility of an amendment of the law being considered in war time and that for the present at any rate there are adequate powers under the Defence Regulations for dealing with the problem, the board is asking shareholders to agree to new articles of association. These would empower the directors to require a certificate from any purchaser or transferee of shares to the effect that he will hold the shares for his own account or alternatively disclose for whose account the shares will, in fact, be held. The list of the names of any such nominees would be open for inspection by any member of the company at all times when the ordinary register of members is open, though in compliance with s. 101 of the Companies Act, 1929, it would not actually form part of the register. The directors would also be empowered to " suspend " shares from participation in dividends, capital and voting rights, with the object of enforcing the new provisions in the articles. The board's circular states that " to prevent hardship to *bona fide* transferees, it is proposed that a buyer who accepts a transfer and complies with the statutes will automatically obtain shares subject to no disabilities. The writer of *The Times' City Notes* of 16th November stated that if the word " buyer " embraced a " pledgee," i.e., a bank with whom the shares had been placed as security, it would remove the fear of the banks that under the proposals they would find themselves making advances against shares which are liable to be suspended. No doubt there are technical and administrative difficulties in the way of carrying out the proposals, but nothing that is worth doing can be done with ease, and the board deserves congratulation on its pioneering effort to serve the public interest.

Far Eastern War Damage.

THE peculiar problems arising out of war damage to property in the Far East have already been referred to in these columns (*ante*, pp. 270, 284). It will be recalled that a Joint Committee of Far Eastern interests was formed to make representations to the Government that the latter should assume responsibility for all loss and damage not recoverable under insurance schemes. Representations to that effect were duly made, and the Government has now published its reply. The Government states that it clearly realises the impossibility of dealing with complex matters of this kind on the basis of a simple statement of principle, and they have always had in mind the practical possibilities and have tried to deal with risks which are within broad limits known and assessable. In dealing with similar problems in the oversea territories, a similar procedure has been followed and commodity war-risk schemes were in operation in most of the territories concerned. No provision was made for the other and greater losses involved in the occupation of the territories by the enemy because of the impossibility of estimating the losses in advance or of dealing with claims until after the reoccupation. Nor is it yet possible to frame any detailed plans for dealing with losses of this kind. Their precise extent, and the position of potential claimants, Asiatic and European, are wholly uncertain. On the other side, the Government have to contemplate potentially enormous claims on their resources for reconstruction, including reconstruction in the Empire; and they have no assurance as to the resources which will be available to meet those claims. Moreover, the first call upon the resources available will be for the reconstruction of productive equipment and the financing of the recommencement of productive enterprise; restoration of property of all kinds needed for that work of reconstruction must have precedence for compensation for past losses. They can do no more than promise to give whatever assistance is in their power when it becomes possible to consider reparation of the losses suffered, having regard to the other demands which may then be made upon their resources. It is the intention of the Government as at present advised to see that the Burma and Malayan Governments are in a financial position to carry out their specific liabilities under the schemes of insurance, which of course include only liabilities in respect of events arising before the date of occupation. Apart from this, the Government do not go beyond the statement already made that " It will be the general aim of His Majesty's Government after the war that, with a view to the well-being of the people and the resumption of productive activity, property and goods destroyed or damaged in the Colonial Empire should be replaced or repaired to such extent and over such a period of time as resources permit." The Joint Committee have expressed some disappointment with this statement, and answer that principle is not dependent on geography, and that the financial consequences of loss either become a burden on the total resources of the State on whose behalf they were incurred, or they fall with grievous injustice and intolerable hardship on those who by the haphazards of war have become its unfortunate victims. Questions of degree of victimisation by war and priority of claim on the State for compensation are bound in any case to be deeply controversial, except in so far as they are already settled by existing legislation, but lawyers cannot help admitting the validity and force of the Government argument that the losses due to enemy occupation of territory cannot be estimated until it is reoccupied. This obviously suffices to distinguish these cases from those of war damage for which compensation schemes have been prepared.

Recent Decisions.

In *R.* v. *Rowe*, on 30th November (*The Times*, 1st December), the Court of Criminal Appeal (VISCOUNT CALDECOTE, L.C.J., WROTTESLEY and TUCKER, JJ.), in quashing a conviction for larceny, observed that it was a great misfortune that the case was heard on one day and then adjourned for sixteen days, as only in very exceptional circumstances should there be a lengthy adjournment, even in the difficult circumstances of war-time.

In *Summers* v. *Salford City Council*, on 4th December (*The Times*, 5th December), the House of Lords (LORD ATKIN, LORD THANKERTON, LORD RUSSELL OF KILLOWEN, LORD WRIGHT and LORD ROMER) held that a house was not maintained in a state reasonably fit for human habitation if a sash-cord of one of only two bedrooms was defective, as by ordinary use injury to life or limb or health might be caused thereby.

In *V/O Sovfracht* v. *Gebr. van Udens Scheepvaart en Agentuur Maatschappij*, on 3rd December (p. 376 of this issue), the House of Lords (THE LORD CHANCELLOR, LORD ATKIN, LORD THANKERTON, LORD WRIGHT and LORD PORTER) held that an arbitrator rightly refused, after the German occupation of Holland, to proceed with an arbitration to which the respondents were parties, the respondents being Dutch shipowners with a commercial domicil in Holland, on the ground that the respondents must thereafter be regarded as alien enemies at common law and therefore were denied *persona standi in judicio* in this country. The court expressed its distaste in so holding in the case of loyal Dutch subjects who had bravely withheld a brutal enemy, but pointed out that that enemy was in effective control of their territory, and the operation of the rule was always subject to permission being given by Royal Licence.

In *In re Samuel, Clayton* v. *Ramsden*, on 4th December (*The Times*, 5th December), the House of Lords (LORD ATKIN, LORD THANKERTON, LORD RUSSELL OF KILLOWEN, LORD WRIGHT and LORD ROMER) held that a clause in a will providing for forfeiture in the event of marriage with a person " not of Jewish parentage and of the Jewish faith " was void on the ground of uncertainty, on the grounds that " Jewish parentage " might refer to race or religion, or both, and did not specify which parent, and because it did not specify the degree of attachment to the Jewish faith.

Coal Act Compensation.

Apportionment between Life Tenant and Remainderman.

(*Continued from p.* 364.)

It is convenient to turn now to the decisions on the previous somewhat similar statutory provisions.

Where, under the Lands Clauses Act, a railway company took settled land which was subject to a lease having about twelve years unexpired and the interest on the invested compensation exceeded the rent, it was held that, under s. 74, the life tenant was not entitled to the excess, which must be accumulated until the expiration of the lease for the benefit of the estate (*In re Wootton's Estate* (1866), 1 Eq. 589). The result was that the life tenant did not become entitled to the whole income until the end of the term. This decision was followed in *Re Mettes' Estate* (1868), 7 Eq. 72, and in *Re Wilkes' Estate* (1880), 16 Ch. D. 597—both being cases under the Lands Clauses Act—and in *Cottrell* v. *Cottrell* (1885), 28 Ch. D. 628—a case under the Settled Land Act, 1882, s. 34, where freeholds were sold under that Act and the income from the proceeds of sale was greatly in excess of the rent which the life tenant had received.

The principle underlying these cases appears to be that the life tenant should not get more income than he would have received had there been no sale, as to do so would have had the effect of giving to the life tenant an advantage over the remainderman to which the former is not entitled (*Cottrell* v. *Cottrell*, *supra*).

The question arises whether this principle applies in regard to the compensation payable under the Coal Act so as to entitle the tenant for life (where his income from the coal would have been either *nil* or something less than the income of the invested compensation) only to such part (if any) of the income as is equivalent to the income which he would have received if the premises had not been acquired by the Coal Commission; or, alternatively, whether, having regard to proviso (ii) to sub-para. (2) of para. 21, the life tenant is at least entitled to the income derived from the invested compensation. If proviso (ii) means what it appears to mean, then, despite the fact that sub-para. (2) says that the trustees or the court may require and cause the compensation to be laid out, invested, *accumulated* and paid in such manner as will give to the beneficiaries under the settlement the like benefit therefrom as they might lawfully have had from that estate or other interest, or as near thereto as may be, yet no accumulation of income shall be made by virtue of that sub-paragraph other than an accumulation of income accruing before the vesting date from payments made on account before that date, as stated in proviso (i). If this is the true position, the principles underlying the above-mentioned decisions (*In re Wootton's Estate*, *supra*; *In re Mettes' Estate*, *supra*; *In re Wilkes' Estate*, *supra*; *and Cottrell* v. *Cottrell*, *supra*) do not apply. This being so, it is difficult to see what meaning "accumulated" can have in sub-para. (2), as, in order to give effect thereto, it would be necessary to accumulate income until coal not being worked might have been expected to come into working (i.e., during the period in which it is not revenue-producing), as otherwise the remainderman would only get, ultimately, the present discounted value of the benefits he might have been expected to receive. One is tempted to seek an avenue of escape from placing such a construction on proviso (ii) as to make ineffective the reference in sub-para. (2) to "accumulated," and it is submitted that the explanation is to be found in the fact that sub-para. (2) is prefaced by sub-para. (1), which refers, not only to the compensation when paid by the Commission, but also to the income thereof. It seems that the reference, both there and in proviso (ii), relates merely to the income payable by the Coal Commission up to the date when compensation is paid. In support of this view, it is to be observed that the main part of sub-para. (2) only refers to "compensation," in the same way as s. 74 of the Lands Clauses Consolidation Act, 1845, refers to "purchase-money or compensation" and s. 79 of the Settled Land Act, 1925, to "purchase-money." Presumably, therefore, the only reason for the two provisos to sub-para. (2) was to provide that, except for the capitalisation of income on amounts paid on account before the vesting date, which, by para. 19, has to be brought into account against the capital of the compensation, no part of the income of the compensation which is due to the date of payment is affected by the provisions of sub-para. (2). If that is the true construction, then the principles underlying the above-mentioned decisions under the Lands Clauses Act and the Settled Land Act apply.

An important point to bear in mind as to the ambit of proviso (ii) is that it is limited by the words "by virtue of this sub-paragraph," and hence, if the settlement otherwise provides, then the income must be apportioned between the life tenant and remainderman in accordance therewith. Therefore, even if proviso (ii) were held to have the effect of limiting *pro tanto* the application of the principles underlying the decisions under the Lands Clauses Act and the Settled Land Act, this would only operate in those cases where the terms of the settlement do not otherwise provide.

Under s. 69 of the Lands Clauses Act, 1845, which provides for the application of purchase-money deposited in a bank for persons under disability (*inter alia*) in payment to any party becoming absolutely entitled to such money, the life tenant is not entitled to any part of the compensation money paid in respect of minerals held under a settlement, though the whole of the minerals could probably have been worked out during his lifetime, the life tenant not having commenced to work them and there being no lease (*In re Robinson's Settlement Trusts* [1891] 3 Ch. 129), but *pace* "Gover on Capital and Income" (1901), at p. 31, this is no authority for the view that the life tenant is not entitled in cases under the Lands Clauses Act to any part of the compensation money paid in respect of minerals where there is no lease; for s. 69 does not contain provisions similar to those of s. 74 of the Lands Clauses Act that the compensation money is to be laid out in such manner as to give the parties interested the same benefits they might have had from the lease.

Where a corporation acquired part of a settled estate under a special Act incorporating the Waterworks Clauses Act, 1847, the minerals in which were comprised in a lease with many years to run, under which the lessees paid acreage and minimum rents and were entitled to make up shortworkings, the accumulations of which were far in excess of the lessors' compensation for the minerals, it was held that, but for the provision of shortworkings, the tenant for life would have been entitled to one-fifth of the fund during each of the five years, two of which had already expired, in which the coal would have been worked out in the ordinary course. Owing, however, to the provision as to shortworkings, by which both the reversioner and the life tenant were bound, the lessees were entitled to the portion of the fund representing coal which would have been worked in the past two years and, subject to their remaining in possession under the lease, to the remainder of the fund, which would be payable to them by half-yearly instalments over the remaining period of three years, varying with the area of coal which would have been worked (*In re Fullerton's Will* [1906] 2 Ch. 138). In an earlier case of *In re Barrington*, *Gamlen* v. *Lyon* (1886), 33 Ch. D. 523, it was held that a life tenant unimpeachable for waste was entitled under s. 74 of the Lands Clauses Act, 1845, to the whole of the lessors' share of the compensation paid by a railway company pursuant to a counter-notice given under the mining code. Kay, J., stated (p. 528): "I quite agree that under that section it is the duty of the court to consider all the circumstances, and if the coal for which compensation was thus received was of such an extent that by no possibility it could be gotten during the lifetime of the existing tenant for life, it seems to me that might be a circumstance which the court might have to regard in determining the relative rights of the tenant for life and the remainderman; but nothing of that kind occurs here." In regard to that decision, Chitty, J., stated in *Re Robinson's Settlement Trusts*, *supra*, at p. 133: "I am satisfied that Kay, L.J., did not intend to depart from the meaning of the words in that section (s. 74), and in the case before him he considered that the sum of £136 0s. 2d., being that part of the compensation which was allotted to the lessor, would fairly represent the value of the reversion in the minerals which the tenant for life could have gotten but for the purchase by the railway company . . . If any apportionment had to be made, the right mode of ascertaining the amount of compensation payable to the tenant for life would be, to ascertain the number of years within which the minerals could be worked out. Say, for instance, twenty years; then to divide the compensation money into twenty parts, and give the tenant for life one of such parts every year. That mode of payment would exactly correspond with his rights in the minerals if the railway company had not intervened." This principle was approved and applied by Swinfen Eady, J., in *Re Fullerton's Will*, *supra*.

Where compensation was paid by a railway company under s. 78 of the Railway Clauses Consolidation Act, 1845, for leaving unworked coal comprised in a lease under which the life tenant was entitled to dead rent and royalties, it was held that the lessors' compensation should not be treated as payable to the life tenant as a lump sum, but should be treated as rent accruing *de die in diem* to the life tenant for the residue of the lease or for such less period as the coal would have been worked out. The money would, accordingly, be payable as income over that period (*Cardigan* v. *Curzon Howe* (1898), 14 T.L.R. 550).

Where, on an acquisition of part of settled property subject to a lease, the lessee agrees to pay the same rent for the remainder, neither the capital nor the income of the lessor's compensation is payable to the life tenant, but the income has to be accumulated until the expiration of the lease (*Re Griffith* (1883), 49 L.T. 161).

Where the proceeds of sale of freehold ground rents were invested in leaseholds, thereby increasing the income, the life tenant was held, under s. 34 of the Settled Land Act, 1882, to be entitled only to so much of the income as would amount to the ground rents sold for the remainder of the term during which the ground rents were payable, the residue being accumulated (*Re Bowyer's Settled Estates* [1892] W.N. 48).

Applying these principles to the Coal Act provisions, it would seem that a life tenant will be entitled to such payment out of the capital and income of the compensation, from time to time, as is relative, as near as may be, to the rents and royalties to which he would have been entitled during any period of his life tenancy

in which the coal might have been expected to be worked, even though the coal was not in lease at the time of the acquisition by the Coal Commission.

Different principles have been held to apply where the compensation represents the proceeds of sale of a leasehold interest held under settlement. In such a case it had been held that the mode of dealing with the purchase-money which will give the parties interested the same benefit, as nearly as may be, as they would have had from the lease, can be attained by investing the money in the purchase of an annuity having as many years to run as there were years remaining in the term and by paying it to the life tenant, and after his death, if the life tenant dies within the term, then to the remainderman, or by calculating what yearly sum, if raised out of the dividends and corpus of the fund, will exhaust the fund in the number of years which the lease has to run and paying to the life tenant the amount so ascertained (*Askew* v. *Woodhead* (1880), L.R. 14 Ch. D. 27, 34, *per* Jessel, M.R., following *In re Phillips' Trusts* (1868), L.R. 6 Eq. 250, and followed *In re Hunt's Estate* (1884), W.N. 181; *In re Lingard, Lingard* v. *Squirrell* [1908] W.N. 107; and *In re Simpson* [1913] 1 Ch. 277). This point is rarely likely to arise, however, under the Coal Act, as the only leasehold interests acquired are those referred to in s. 5 (2) of the Coal Act, which are unlikely to be interests subject to a settlement or to a trust for sale the proceeds whereof are subject to a settlement by way of succession.

To the extent to which the life tenant is entitled to a yearly payment of some part of the compensation in excess of the income from the investments of that compensation, it may be that this excess should be regarded as a capital payment and hence not subject to taxation, except in the case of annuity payments where leasehold interests are acquired, and under the principle of *Askew* v. *Woodhead*, *supra*, payment is made by way of annuity.

The apportionment of compensation between tenant for life and remainderman is complicated by the fact that the actual compensation payable under the Coal Act is not the amount of the valuation of the Regional Valuation Board, as the valuation has to be scaled up or down so as to make the total compensation for all the holdings in any region equivalent to the regional valuation. It seems that the tenant for life should not get more income than he would have received if the premises had not been acquired by the Commission, so that if, for example, the compensation actually payable in a case where it is anticipated that the coal will be worked out in four years from the 1st July, 1942, is, with the income from the investment of the compensation, more than sufficient to provide four yearly payments equivalent to the royalties that would have been received in those four years, the excess should be treated as capital money of the settlement. On the other hand, if in the instance given the compensation, with the interest it earns when invested, is insufficient to provide those four yearly payments, then the tenant for life is only entitled to yearly payments attributable to the money available, as to pay him more would be to the detriment of the remainderman if the tenant for life died during the four years.

This raises the question whether application can properly be made to the court under para. 21 of the Third Schedule to the Coal Act, 1938, before the relevant certificates of the Regional Valuation Board have become conclusive under para. 17 of that Schedule and the amount of the compensation has thus been finally ascertained. It would seem that any such application would be premature, even though a payment on account may have been received; for, although para. 21 (1) in introducing the succeeding provisions of that paragraph refers not only to the compensation but also to payments on account thereof, there are no final figures on which to work until the compensation has been fixed. The moral to be drawn from this seems to be that application should not be made for a payment on account in respect of any holding to which para. 21 (2) applies, unless the trustees are prepared to exercise their own discretion thereunder as to how the compensation is to be allocated between tenant for life and remainderman. The trustees would probably be more prepared to exercise that discretion if the application for payments on account were limited to the quarterly payments under para. 20. Assuming that the coal was in lease on the 1st July, 1942, it would seem that the trustees might safely pay to the life tenant the whole quarterly payments, or three-quarters or one-quarter thereof, according to whether he is entitled to the whole or only a proportion of the income under the settlement, as such payments would appear to be well within the income which he would have received without causing any detriment to the remainderman. Difficult questions arise, however, where the coal was not in lease on the 1st July, 1942, and hence is not revenue-producing. The better view would appear to be that, subject to any provision of the settlement, the life tenant is entitled, under proviso (ii) to para. 21 (2), to the income payable by the Coal Commission on the unpaid compensation, despite the fact that any payment made to the life tenant out of the income of compensation which is based on the deferred value of coal is to the detriment of the remainderman. If this is the true view, then any accumulations necessitated by the main part of para. 21 (2) only accrue from the date when the compensation is paid. The income payable by the Coal Commission is, by s. 7 (8) of the Coal Act, calculated on the average yield of certain securities on the 1st July, 1942, and has been ascertained to be £3 0s. 11d. per cent.; but it is impossible to make more than an approximate estimate of the amount of that income until the compensation is finally fixed. In these circumstances, and pending a judicial interpretation of the scope of proviso (ii), it is apprehended that trustees will be loath to exercise their discretion to distribute any payment on account of compensation in respect of unlet coal, and will, in fact, refrain from applying for one; for, as previously stated, it would be premature yet to apply to the court for directions.

When the capital of the compensation is received, consideration must then be given to the manner in which it should be invested. A relatively wide range of investment of compensation attributable to an estate or interest subject to a settlement or trust for sale under para. 21 (2) is authorised by the Coal Act, notwithstanding anything in the trust instrument (Third Schedule, para. 21 (5)), and this applies also to compensation for an estate or interest vested in trustees on, or for, charitable, ecclesiastical or public trusts or purposes (*ibid.*). If advantage is taken of investing in securities giving a higher interest yield than trustee securities produce, this authorisation may enable payments to be made to the beneficiaries more nearly approximating the income they would have received, while at the same time reducing the extent to which those payments would fall to be made out of the capital of the compensation.

The costs reasonably incurred by any person having an acquired interest in a holding, in connection with any application to the court that may be requisite for the purpose of determining the manner in which the compensation ought to be held and disposed of, are payable by the Coal Commission (Third Schedule, para. 22 (1) (*c*)), except to the extent to which the costs are occasioned by proceedings for the determination of disputes between adverse claimants (s. 39). The Commission are, however, not placed by the Act under any liability to pay the costs incurred by trustees in exercising their own discretion, nor would it seem, indeed, that Settled Land Act trustees are persons with acquired interests so as to come within the scope of para. 22 (1).

A study of this somewhat complex subject indicates that technical knowledge and actuarial calculations necessitating expert advice may be required before trustees can themselves determine the apportionment between life tenant and remainderman after the compensation has been finally fixed, or before a beneficiary under the settlement can usefully apply to the court for an order as to how the apportionment is to be made. Much of the requisite information will already have been made available in the preparation of the estimate of value leading up to the Regional Valuation Board's valuation. That estimate has to give particulars of the terms of the lease, if any, including date of expiry, break clauses and rights of renewal, the certain or minimum rents, royalties and other sums payable, the allowances or deductions under the lease from rents and royalties, particulars of short workings as on 1st January, 1939, and an estimate of future revenue. Much of this information would seem to be material for the purposes of para. 21 (2), but it should, of course, be related to the Vesting Date (1st July, 1942) instead of to the Valuation Date (1st January, 1939).

(Concluded.)

Correspondence.

Hats and Courts.

Sir,—Referring to the "Current Topic" in your issue of the 5th December, at p. 361, I do not see that women are worse off than men. Men dare not appear in court or in church wearing a hat, while convention demands that women must have their heads covered.

If women are to be free to be covered or not, are men to be precluded from exercising a like liberty in this freedom-loving country?

Brynmawr. DAVID THOMAS.
7th December.

Obituary.

MR. W. BAILEY.

Mr. William Bailey, solicitor, of Halifax, Yorks, died recently aged seventy-nine. Mr. Bailey was admitted in 1885.

MR. G. L. CAMPBELL.

Mr. George Leslie Campbell, solicitor, of Messrs. Caporn and Campbell, solicitors, of Fleet Street, E.C.4, died on Sunday, 6th December. Mr. Campbell was admitted in 1906.

MR. A. F. GRIFFIN.

Mr. Arthur Frank Griffin, solicitor, of Messrs. Arthur F. Griffin & Son and Messrs. Stanley & Jackson, solicitors, of Walsall, Staffs, died on Wednesday, 25th November, aged fifty-nine. He was admitted in 1923.

A Conveyancer's Diary.

Attestation of Wills.

EVEN in these days it is difficult for the practitioner not to feel surprise at the extraordinary number of testators who neglect or refuse to have their wills properly drawn up and at the strange ingenuity which they exhibit in finding new follies to commit. One would almost have thought that in over a century the very simple ritual prescribed by the Wills Act would have been generally understood, or at least that the public would have realised that a guinea spent in employing legal advice in this matter is a positive economy. But it is not so. We must, I think, accept the fact that there is a deep-seated and almost superstitious desire to be secretive about one's own will; eventually, perhaps, this superstition will be cured by better general education.

The Law Reports for November contain the report of *In the Goods of Mann* [1942] P. 146, decided by the late Langton, J., last June. This case goes further in upholding a badly executed will than I should have thought possible, even granted that there was no question of fraud. The testatrix wrote out her will on a sheet of paper, one of the attesting witnesses being present throughout the process. The other witness was present during the latter part of it. The testatrix then took an envelope and wrote on it "The last will and testament of Jane Catherine Mann." She then pointed out to the witnesses, who were both present by this stage, that the documents which she had written were her will, and she asked them to witness it. Thereupon, in the presence of the testatrix and of each other, the witnesses signed their names at the bottom of the piece of paper under the words "In the presence of witnesses" with which the writing on the paper concluded. The testatrix did not sign the paper at all, but put it directly into the envelope. She then deposited the envelope and its contents at her bank, but brought them home again after six months. Shortly afterwards she went to hospital taking the will with her. While she was there, the executrix visited her and at her request brought another envelope and some sealing wax. Into this second envelope the testatrix put the first envelope (and its contents) and other papers. She then sealed the second envelope and handed it to the executrix who kept it untouched till after the testatrix's death.

It has been necessary to state the career of the will in detail as the learned judge relied on these facts as entitling him to regard the case as one where there could be no question but that the document tendered was really that which the testatrix had executed as her will. It is perfectly clear from his judgment that had there been any room for doubt on this point, he would have refused to grant probate of the document. But in the circumstances the question to be decided was whether the words "Jane Catherine Mann" written by the testatrix on the envelope were a sufficient signature for the purposes of the Wills Act, 1837, as amended by the Wills (Amendment) Act, 1852. Under the Act of 1837 the signature of a will was required to be "at the foot or end thereof." This requirement gave trouble, and the Act of 1852 contains a very long section which in effect allows the signature to be anywhere under, or by the side of, the end of the will. Langton, J., did not recite this provision as it was admitted that it contained no words covering the present case. I confess that I should have expected that admission to be the end of the matter. I should have expected the court to hold that the envelope was a mere cover to keep the paper clean and hidden and that it was not itself part of the intended testamentary instrument. The witnesses were asked to witness *the will*, and thereupon attested the paper, thus clearly showing that it was the paper which they regarded as being the will. Moreover, if one finds the words "The will of A B" on an envelope, one naturally regards them as being short for "This envelope contains the will of A B," and in the ordinary meaning of language the words "A B" appearing in such a place are not a "signature" even if the superscription is in A B's handwriting. The whole phrase would seem to be merely indicative of the contents of the envelope.

Fortunately for Jane Catherine Mann's legatees, the court took a different view. Langton, J., was prepared to treat the last three words on the envelope as a signature, and to deal with the case on the footing that the testatrix intended the envelope to be part of her will. On that basis the question was whether or not the case was one where the court was entitled, under its existing function, to admit to probate a testamentary instrument contained in two documents only one of which was signed. The court has always "held fast to the rule that no document can be allowed to form part of a will which was not physically or otherwise connected to the signed portion of the will at the moment of signature," *per* Langton, J., at p. 148. It would, I think, have been more accurate if the last words of this observation had been not "at the moment of signature," but "at the moment of execution," since the testator in *Lewis* v. *Lewis* (referred to below) did not sign in the presence of the witnesses, but only acknowledged in their presence a signature which he had already penned.

As long ago as 1874, Sir James Hannen, in *In the Goods of Horsford*, L.R. 3 P. & D. 211, had admitted to probate a codicil consisting of a piece of paper containing dispositions and attached by a piece of string to another sheet of paper containing only the signature and attestation. Treating the envelope in *Re Mann* as an operative sheet of paper and not as a mere covering, the only distinction between that case and *Re Horsford* was that in the latter the two sheets were tied together and the attestation was on the same sheet as the signature, while in *Re Mann* there was no physical connection or contact between the sheets until after the witnesses had signed and the attestations were on a different sheet from the signature. In *Lewis* v. *Lewis* [1908] P. 1, however, it had been held sufficient annexation for a testator to hold together two sheets with his finger and thumb while his witnesses were signing the lower one, which also contained the testator's signature. And in *In the Goods of Almosnino* (1859), 29 L.J. (P.) 46, a will had been admitted to probate where the dispositions were contained in a sheet of paper, signed by the testator but not witnessed, which was put inside an envelope which bore the words, "I confirm the contents within in the enclosed document in the presence of A and B," followed by the signatures of the testator and both witnesses.

Though *Re Almosnino* differed from *Re Mann* in the wording on the envelope, it does get over the difficulty of non-annexation, since there was nothing to correspond to the piece of string in *Re Horsford*. It was thus more helpful than *Lewis* v. *Lewis*, where there was undoubtedly contact between the sheets at the moment of execution.

But the real difference between *Re Mann* and the other cases was that in each of the others the three signatures were all on the same piece of paper as one another. In *Re Mann* they were not. Langton, J., was prepared to say, however, that the rules relating to annexation were designed "to obviate the possibility of fraud," and that if that possibility were obviated by other means he did not feel it necessary to insist on its being obviated also by the recognised means of annexation. That is the substantial point decided, and the learned judge was careful to say that he desired to draw specific attention to the exceptional facts of the case, from which it was clear that there was no possibility of fraud. That being so the decision is not authority for any general proposition that the signature of a will can safely be on an envelope or on any other sheet of paper separate from that containing the dispositive clauses, nor that the signature and attestation can normally be on different sheets of paper. Its interest lies in the fact that it shows that the court is now astute to find reasons to uphold documents intended as testamentary but not executed in the recognised manner. No doubt justice was thus done in *Re Mann*, since the testatrix's intention was fulfilled, but it would be unfortunate if the idea gained currency that the rules are being relaxed. It is therefore to be hoped that *Re Mann* will not be too freely applied to other cases.

Books Received.

What is Banking? By The Rt. Hon. REGINALD MCKENNA. 1942. pp. 24. London: Waterlow & Sons, Ltd. 6d. net.

The Law relating to the Marketing and Sale of Medicines. By H. E. CHAPMAN, of Lincoln's Inn, Barrister-at-law. 1942. Crown 8vo. pp. 169 (with Index). Bedford: Henry Burt and Son, Ltd. 7s. 6d. net.

The Lawyers' Companion and Diary. Ninety-seventh Annual Issue. Part I, edited by ARTHUR E. SMITH, Order Department, Central Office of the Supreme Court of Judicature. Large Crown 8vo. pp. xxvi and 871. London: Stevens & Sons, Ltd.; Shaw & Sons, Ltd. 15s. to 22s. net (including purchase tax).

The Journal of Comparative Legislation and International Law. Third Series. Vol. XXIV, Part II. November, 1942. London: Society of Comparative Legislation. 6s. net.

The Companies' Diary and Agenda Book. By HERBERT W. JORDAN. Sixtieth Edition by J. GORDON HASSELL, F.C.I.S. 1942. London: Jordan & Sons, Ltd. 8s. 6d. net.

Parliamentary News.

HOUSE OF LORDS.

British Nationality and Status of Aliens Bill [H.L.].
Read Second Time. [8th December.

Expiring Laws Continuance Bill [H.C.].
Read First Time. [8th December.

HOUSE OF COMMONS.

Agriculture (Miscellaneous Provisions) Bill [H.C.].
Read Third Time. [3rd December.

Police (Appeals) Bill [H.C.].
Read First Time. [2nd December.

Supreme Court (Northern Ireland) Bill [H.L.].
Read First Time. [1st December.

National Service Bill [H.C.].

Workmen's Compensation Bill [H.C.].
Read Second Time. [8th December.

Landlord and Tenant Notebook.

Tenancies at Will and the Rent Acts.

WHEN writing on " A ' Tenancy by Conduct ' case " in our issue of 7th March last (86 SOL. J. 68), I concluded my discussion of *Bramwell* v. *Bramwell* (1942), 1 All E.R. 137 (C.A.), with the observation that if there had been a tenancy at will in that case, *Ecclesiastical Commissioners* v. *Hilder* (1920), 36 T.L.R. 771, was authority for the proposition that the Rent, etc., Restrictions Acts would not have affected it. The note of caution was justified, for now *Chamberlain* v. *Farr* (1942), 2 All E.R. 567 (C.A.), has, without (it is true) mentioning the earlier case, provided stronger authority to the contrary.

It is worth while, when examining this subject, to go back to the little-known decision of Lord Reading in *Dobson* v. *Richards* [1919] W.N. 166. In that case the landlord of a house then outside the Acts offered his tenant, whose term expired on Ladyday, 1919, a new tenancy at an increased rent; the tenant declined, but remained in possession, and before the landlord issued his writ for possession (which was on 16th April, 1919) the 1919 Act had come into force and dwelling-houses of the rateable value of this particular house were (if let) within its scope. The defence simply asserted that the house was let when the writ was issued, and argued that the tenant was " holding over," though it was not suggested that any rent had been paid or even agreed. The plaintiff contended that the defendant was a tenant at sufferance, and I venture to think that if his argument had either been that the defendant was a trespasser or gone on to emphasise and illustrate the incidents of the alleged tenancy (" the lowest estate ") he might have succeeded, which he did not. As things are, the decision is authority for the proposition that a tenancy at sufferance is within the Acts: which would have astonished Coke as much as the Acts themselves would.

Ecclesiastical Commissioners v. *Hilder*, *supra*, was a claim for possession against the resident caretaker of a large empty house who had been told to go. The plaintiffs' line of argument was that as the Acts expressly excluded houses let at nominal rents, those with no rent at all were *a fortiori* outside their purview; besides, how could the landlords impose their 15 per cent. increase? The defence was that the services performed by the defendant were tantamount to rent (counsel did not suggest how he could have been called upon to take 15 per cent. more care) and that he was, as regards term, a tenant at will. Avory, J., declared himself quite satisfied that there had never been a tenancy at all, but went on to say that he had been told that he was bound to assume, for the purposes of his judgment, that the defendant was a tenant at will, and he would assume this, " however painful it might be to have to do so." And his lordship thereupon held or said that a tenancy at will was not protected by the Rent, etc., Restrictions Act. I think that some who practised before the late Avory, J., will have a shrewd suspicion that the *ratio decidendi* of the judgment was that there was no tenancy, the rest being *obiter dictum*.

The facts of *Chamberlain* v. *Farr* were as follows: An intending purchaser of a house was entitled to occupy it between contract and completion as a tenant at will. It was not ready for occupation even when the date for completion arrived, and the vendors gave him possession of another house in the same road for which he paid them 12s. a week (7s. 6d. less than he would have paid at the house he had agreed to buy) and furnished him with a rent book. Some months later he applied under the Rent and Mortgage Interest Restrictions Act, 1923, s. 11, for summary determination of the standard rent.

Both registrar and county court judge appear, according to the judgment of Lord Greene, M.R., to have considered that there was no tenancy at all, but an " accommodation arrangement." One might compare the finding of another county court judge in a case discussed and criticised in the " Notebook " of 8th August last (86 SOL. J. 222); the facts were very different, as the status of bomb victims housed by a local authority was under examination, but the finding " the object is to provide temporary shelter and not permanent homes," was similarly arrived at. In that case the ruling was that the sheltered ones were licensees; and, according to the learned Master of the Rolls, the registrar and judge concerned in *Chamberlain* v. *Farr* had decided that there was no tenancy at all, but " something in the nature of the licence."

But Lord Greene then goes on to cite a note made by the judge: " Tenant at will not within the Rent Acts," and comments " I must confess I do not understand that; because it is not suggested that that statement as it stands can be supported." That it can be supported (I do not say adequately) has been demonstrated.

The argument advanced for the landlord in fact abandoned (possibly in view of the rent-book, an awkward thing to explain away) the suggestion that there was no tenancy, and urged that there was a tenancy at will. The reaction of the court was that it was immaterial whether there was a weekly tenancy or a tenancy at will; the Acts would apply in either case. Hence the indifference to the reasoning behind the county court judge's note. But it is a pity that the question whether a tenancy at will is within the Rent Acts should have been decided, if this does amount to an authoritative decision, with so little argument and deliberation.

There was another point in the case; the registrar and county court judge, whatever they decided about the status of the tenancy, had gone on to assess the standard rent and for this purpose had had resort to s. 6 of the Rent, etc., Restrictions (Amendment) Act, 1933. This authorises a court when " it is not reasonably practicable to obtain sufficient evidence to ascertain the rent at which the house was let on " the relevant date, i.e., *prima facie*, 3rd August, 1914, for pre-1939 Act controlled houses, 1st September, 1939, for the new class—to determine the standard rent " as it thinks proper having regard to the standard rents of similar dwelling-houses in the neighbourhood." This enactment was passed, it may be remembered, because by 1933 it was frequently well-nigh impossible to find anyone who could give reliable evidence on the 1914 rent. However, in this case, though the house had been let, as stated, at 12s. a week, and so let on 1st September, 1939, the county court considered that this was not an " economic " rent, and that the parties had contemplated that it would be raised " sooner or later," and therefore " determined " the figure at 19s. 10d. a week. This, the Court of Appeal held, was (*a*) unsupported by any evidence; and (*b*) in any event, could not displace the operation of the relevant words of s. 6. But Lord Greene considered that the real trouble was that the county court had gone wrong at the outset in deciding that this was not a tenancy at all.

Our County Court Letter.

Decision under the Workmen's Compensation Acts.

Pneumonia from Horse Bite.

IN *Featherstone* v. *Norman*, at Haltwhistle County Court, the applicant's case was that her deceased husband had worked for the respondent, who was a butcher. In the course of his employment, the deceased had been bitten by a horse, and, in his subsequent illness, pneumonia had supervened, with fatal results. It was contended that the deceased had died as a result of an accident in the course of his employment. This was denied by the respondents, whose medical evidence was that the pneumonia had no connection with the horse bite. His Honour Judge Allsebrook upheld the applicant's contention. An award was made of £288, with costs.

No Notice of Accident.

IN *Wallis* v. *Penzance Corporation*, at Penzance County Court, the applicant's case was that he had suffered from an abscess in the chest. This was the result of a blow received while doing work on air-raid shelters in March, 1941, while the applicant was in the employ of the respondents. The respondents' case was that they had received no notice of the alleged accident. Moreover, their records showed that the applicant had ceased working on air-raid shelters as far back as December, 1940. His Honour Judge Scobell Armstrong observed that an applicant must prove when and where an alleged accident had happened. In face of the evidence of his own witnesses, the case for the applicant had been put on the basis that the accident had in fact happened while he was employed by the respondents, as he and his witnesses had merely mistaken the date. It was impossible to hold, however, that the applicant had discharged the onus of proof. No award was therefore made.

The Definition of a War Injury.

IN *Rippington* v. *Kingerlee & Sons, Ltd.*, at Oxford County Court, the applicant claimed a declaration of liability. His case was that he was a carpenter and joiner, and he had been working for the respondents on some scaffolding at an aerodrome. On the 12th March an aeroplane was seen to be out of control, and it eventually crashed on the part of the building on which the applicant had been working. He had saved his life by jumping to the ground just before the crash. The distance was about 14 feet, and, as the applicant was nearly sixty, the fall had caused a thrombosis of the retina of one eye, causing loss of vision. Although now a one-eyed man, the applicant had suffered no diminution in earning capacity, but this was due to the present abnormal state of the labour market. No compensation was therefore claimed. The case for the respondents was that the injury was a war injury, within the meaning of the Personal Injuries (Emergency Provisions) Act. Liability under the Workmen's Compensation Act was therefore excluded. The Ministry of Pensions had admitted the claim of a workmate of the applicant, under the former Act, as a war injury. His Honour Judge Hurst held that there was a distinction between the two cases. The applicant's workmate had been injured by falling débris, by reason of the impact of the aeroplane on the roof. There was a different line of causation in the case of the applicant, who had been hurt by the fall, and not by the impact of the aircraft. The claim was admissible under the Workmen's Compensation Acts, and a declaration was made as asked, with costs.

To-day and Yesterday.

LEGAL CALENDAR.

7 December.—On the 7th December, 1734, "was a trial in the Court of Common Pleas between Mr. John Shipthorp, printer, plaintiff, and John Stevens, bookbinder, defendant, for exercising the art and mystery of printing, not having served seven years to the trade. The jury gave six months' damages for the plaintiff, 40s. a month being the penalty by the statute of 5 Eliz."

8 December.—William Noel, son of Sir John Noel, of Kirby Mallory in Leicestershire, was born in 1695 and educated at the Litchfield Grammar School. He was called to the Bar by the Inner Temple in 1721. In the following year he entered the House of Commons as Member for Stamford, of which place he was Recorder for many years. In 1738 he took silk and became a Bencher of his Inn. In 1749 he was appointed Chief Justice of Chester, and in 1757, through the influence of Lord Hardwicke, he was made a Judge of the Common Pleas. He died on the 8th December, 1762. Horace Walpole calls him "a pompous man of little solidity."

9 December.—At the hearing of *Holme* v. *Noah*, before Lord Chief Justice Ellenborough at the Guildhall on the 9th December, 1809, some interesting evidence was given as to Jewish marriage ceremonies. The plaintiffs were coal merchants suing on a bill of exchange for a small sum of money for coals supplied to the defendant, who pleaded that she was a married woman, and called witnesses to prove her marriage in 1781 at the Leadenhall Street Synagogue. The entry in the register was translated into English and set out that on the fourth day of the week, in the second month Neron, in the year 5541 after the creation of the world, Henry Noah said to Emily: "Become thou a wife unto me according to the law of Moses and I will ever after maintain thee according to the rites of the Jews." And the priest said: "I heard him account her wife and she shall bring to him the dowry of her virginity according to the law and she shall remain and cohabit with him." The bride and bridegroom then produced presents of gold and silver and he took all the responsibility of the care of all for himself, his wife and their children. The court held the marriage proved and the plaintiffs were non-suited.

10 December.—When the Old Bailey Sessions ended on the 10th December, 1779, six men were condemned to death—John Howell for stealing 352 silk handkerchiefs and other goods to a considerable quantity from the house of a pawnbroker in Bishopsgate Street; William Kent for robbing a King's Messenger of his watch and money on the highway near Gunnersbury Lane; and four men for a burglary in a house in Coldbath Fields. Nine were sent to the hulks on the Thames and four to hard labour in the House of Correction.

11 December.—Mrs. Phipoe was a ferocious woman. She came into collision with the law as the result of an episode when she trapped a gentleman in her house, bound him to a chair and under threat of cutting his throat forced him to sign a promissory note for £2,000. For this she was sentenced to twelve months' imprisonment, but she had not been very long released before she was arrested for murdering Mary Cox, an acquaintance of hers at her lodgings in Garden Street, in the Parish of St. George-in-the-East. What exactly happened was never quite clear. The people of the house heard a scuffle and groaning upstairs and sent for help. Mary Cox was found suffering from five stabs in the neck and throat besides several wounds in different parts of her body. At first she could not speak, and she afterwards died in hospital. Her story was that she had bought a gold watch and other articles from Mrs. Phipoe for £11 and had asked for a china coffee cup on the chimney piece into the bargain; the prisoner bade her take it but, as she was doing so, stabbed her in the neck, afterwards holding her down for more than an hour and threatening to kill her. Mrs. Phipoe was condemned to death and hanged at Newgate on the 11th December, 1797, before a great crowd.

12 December.—On the 12th December, 1777, the Rev. Mr. Russen was hanged at Tyburn for rape, together with a coiner. "Russen, just before he left prison, seeing a company about him, made use of this emphatical expression: 'Stand clear. Look to yourselves. I am the first hypocrite in Sion.' He behaved with decency and the parting between him and his son was very affecting." To the last he denied the crime of which he was convicted.

13 December.—On the 13th December, 1782, "in the Court of King's Bench before Lord Mansfield a special action against an innkeeper in the City to recover £240, the value of the contents of a box delivered to his book-keeper by the tradesman's apprentice and booked accordingly, was tried. It appeared that the box so booked was afterwards on some pretext fetched away by the same apprentice, the contents sold and the same box returned filled with stones, etc. The question was: Who should bear the loss? After hearing counsel, Lord Mansfield gave his opinion for the defendant, the plaintiff not having booked his box according to the notice given by the innkeeper not to expect responsibility for goods of value, unless entered and paid for as such."

Points in Practice.

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29–31, Breams Buildings, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Agricultural Land.

Q. Two acres of land were let, before the war, as a car park, and so used during a fortnight of the year, and not used for any other purpose, except that the hay was cut and carted away. The landlord was assessed for Sched. A at £180 a year, being the rent, and the lease came to an end on the 29th September, 1940. Thereupon the assessment was reduced both for Sched. A and Sched. B to a nominal sum in accordance with agricultural value. At no time has there been any buildings on the land, and it is now used for allotments. The war damage contribution is claimed at 2s. in the £ on £180 on the ground that the land at no time came within the definition contained in s. 2 of the Rating and Valuation (Apportionment) Act, 1928. We can see no way out, but it is hard on the landlord to have to pay contributions the same as if buildings were involved, and upon land actually used for purposes of agriculture. Is there a way round?

A. For 1941 the Inland Revenue ruling is probably correct. The Rating and Valuation Act referred to defines agricultural land as any land used as arable, meadow or pasture ground *only*. It seems doubtful, therefore, whether the lower 6d. rate is applicable as regards the 1941 instalment of the war damage contribution. The Inland Revenue would probably contend that the carting of hay would prevent the land being described as waste land, and it is doubtful whether an appeal to the Ministry of Agriculture and Fisheries on this point would succeed, although it might be tried. On the whole our view is that the chances of securing the 6d. rate for war damage contribution for the year 1941 are not good. For 1942, however, there seems to be the possibility of making an appeal under para. 13, Sched. I of the War Damage (Amendment) Act, 1942. This paragraph reads as follows: "*Reduction of contribution where Schedule A Assessment reduced, otherwise than through war damage by reason of destruction or demolition of buildings.*—At the end of subsection (2) of section thirty (which provides that where by reason of alteration in the condition of a unit of land a Schedule A assessment is replaced by another such assessment, the lower of the two assessments is to be disregarded) there shall be inserted the following proviso: 'Provided that where the alteration is caused, otherwise than by war damage, by the destruction or demolition of buildings or works, or parts thereof, comprised in the unit of land, then, as respects an instalment of contribution for any year (being a year subsequent to the year nineteen hundred and forty-one) the relevant date in which falls after the new assessment is first in force, the assessment replaced, and not the new assessment, shall be disregarded for the purposes of this Part of this Act notwithstanding that the amount of the new assessment is less than that of the assessment replaced.'" A claim should be made to have the new and nominal Sched. A value substituted for the figure of £180 for the purpose of assessing the war damage contribution for 1942 and subsequent years. The car park has been destroyed and the land is not available for this purpose. The "works" referred to in the section would be the surface of the ground and that has been completely destroyed by the utilisation of the land for allotments. It may involve a certain straining of para. 13, Sched. I, of the 1942 Act to bring this case within its ambit, but the Inland Revenue would in our view be adopting an unreasonable attitude if they were not prepared to apply para. 13 so that the reduced Sched. A assessment can become effective for war damage contribution purposes from 1942 onwards. It occurs to us that some inspectors of taxes might have stretched a point in 1941 and allowed the 6d. rate, although the title to it is perhaps somewhat doubtful. The lower rate having been refused, however, it would be harsh and inequitable if the Revenue were also to refuse the application on the second count under para. 13. If necessary this case should be taken to appeal. Before this is done, however, we suggest that the facts should be placed before the Chief Inspector of Taxes (War Damage Contribution), Imperial Hotel, Llandudno. His opinion might be sought on both points. The fact that the Inland Revenue refused the 6d. rate in 1941 may, as we have indicated, render the chances of success on that point doubtful. There should, however, be a reasonably good chance that the Chief Inspector would agree that para. 13 should be regarded as applying to this case so that the assessment for war damage contributions can be reduced to the nominal Sched. A assessment which has been secured for income tax purposes. If these representations to the Inland Revenue are unsuccessful, then the case should be taken to the Commissioners.

The usual monthly meeting of the directors of the Law Association was held on Monday, 7th December, Mr. G. D. Hugh Jones in the chair. There were six other directors present. A sum of £154 was voted in relief of deserving applicants and other general business was transacted.

Notes of Cases.

V/O Sovfracht *v.* Gebr. van Udens Scheepvaart en Agentuur Maatschappij.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Wright and Lord Porter. 3rd December, 1942.

Alien enemy—Plaintiff resident in enemy-occupied territory—Right to sue.

Appeal from a decision of the Court of Appeal.

The respondents were a shipowning company incorporated before the war under the law of Holland, with their principal place of business at Rotterdam. By a charter-party dated the 11th August, 1939, the respondents chartered one of their vessels to the appellants, a Russian company. Disputes having arisen, in April, 1940, each party appointed an arbitrator under the arbitration clause in the charter-party. Before, the matter could proceed further, Germany invaded Holland and by June 1940, all that country was occupied and had since been completely under enemy control. In these circumstances, the appellants refused to proceed with the arbitration on the ground that the respondents had become enemies. In June, 1941, the respondents took out a summons for the appointment of an umpire. Master Ball made the order and his order was affirmed by Asquith, J. The Court of Appeal affirmed his decision, holding that the respondents were not in the position of alien enemies at common law and still enjoyed the right to resort to the King's courts.

Their lordships took time.

VISCOUNT SIMON, L.C., said that it was common ground that an "alien enemy" could not sue in the King's courts, save under Royal Licence. An alien enemy, in this connection, did not mean a subject of a State at war with this country, but a person of whatever nationality who was carrying on business in, or was voluntarily resident in, the enemy's country (*Porter* v. *Freudenberg* [1915] 1 K.B. 857, at p. 869). The respondents must be treated as "resident" in Rotterdam. The question was simply whether residence in territory, which has been invaded and was forcibly occupied by the enemy, disqualified (apart from Royal Licence) from bringing a suit in the King's courts. His conclusions deduced from the authorities might be summarised as follows: (1) The test of enemy character was the same, whether the question arose over a claim to sue or over issues in a court of prize, or over a charge of trading with the enemy at common law. (2) The test was an objective test, turning on the enemy's relation to the territory where the individual voluntarily resided or the company was commercially domiciled; it was not a question of nationality or of patriotic sentiment. (3) If the enemy invaded and forcibly occupied territory outside his own boundaries, residence in that territory might disqualify from bringing or maintaining suit in the King's courts in the like manner as residence in the enemy's own territory. (4) But this was not always so. It depended on the nature of the occupation. If there had been effective and complete subjugation and forcible control, such as made enemy administration, at any rate for a substantial time, as complete as though the area were part of the enemy's territory, the area had "enemy character," and local residents could not sue in our courts, and goods shipped from such an area had enemy origin. If, on the other hand, the occupation was of a slight character, being merely for purposes of military strategy and not involving complete enemy control, the case was different. Here the occupation of metropolitan Holland was plainly of the most absolute kind. (5) The reason why a resident in enemy-occupied territory was in certain circumstances subject to the same disabilities as a resident in enemy territory was that acts which might be to the advantage of the enemy by increasing its capacity for prolonging hostilities were forbidden. If the claimant succeeded, an asset in the form of a judgment was created which the occupying power could appropriate. (6) The common law disability to sue could not be regarded as got rid of because Emergency Regulations prevented the transmission abroad of the sum recovered. (7) The operation of the rule refusing *persona standi in judicio* was subject to permission being given by Royal Licence. For these reasons the appeal must be allowed.

The other noble and learned lords delivered opinions concurring.

COUNSEL: *Pritt*, K.C., and *Gerald Gardiner*; *Sir Robert Aske*, K.C., and *A. Hodgson*.

SOLICITORS: *Lawrence Jones & Co.*; *Constant & Constant*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

CHANCERY DIVISION.

Bose *v.* Harris.

Farwell, J. 17th November, 1942.

Mortgage—Receiver appointed by debenture-holder—Receiver agent of company—Director of company obstructs receiver—Debenture-holder claims injunction against director—Whether any cause of action.

Motion.

The defendant company was incorporated in 1938. By a debenture dated the 10th March, 1939, the company charged all its assets in favour of the plaintiff with payment of the sum of £2,000 and certain other moneys to be calculated by reference to the profits of the company. The debenture authorised the plaintiff at any time after the principal money thereby secured should have become payable to appoint a receiver of the property charged. A receiver so appointed was to be deemed to be the agent of the company. On the 19th October, 1942, the plaintiff, in exercise of his powers under the debenture, appointed a receiver of the company. The plaintiff alleged that the defendant H, the managing director of the company, had obstructed the receiver in the exercise of his powers, and on the 26th October, 1942, he started an action to which H and the company were defendants asking, as against H, for an injunction restraining him from obstructing or interfering with the receiver of the company, and, against the company, for accounts and inquiries. By this motion the plaintiff asked for an interim injunction against H similar to that sought in the action. At the hearing of the motion the preliminary objection was taken that the plaintiff was not entitled to the relief which he sought, as the receiver he had appointed was the agent of the company, and, if he had been obstructed by H in the performance of his duties, as was alleged, this gave no cause of action to the plaintiff.

FARWELL, J., accepted the contention of the defendant H, and said he would dismiss the motion with costs in any event.

COUNSEL: *H. Lightman*; *A. C. Nesbitt*.

SOLICITORS: *Bentleys, Stokes & Lowless*, for *Symons & Gay*, Romford; *Reynolds & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

McKean *v.* Raynor Bros., Ltd.

Hilbery, J. 2nd November, 1942.

Principal and agent—Liability of principal for torts of agent—Course and scope of employment—Doing authorised act in unauthorised manner—Whether principal liable.

Action under the Fatal Accidents Act, 1846, and the Law Reform (Miscellaneous Provisions) Act, 1935, by the personal representative of a deceased person who died as the result of an accident alleged to have been due to the negligent driving of the defendant. The negligence was admitted.

The deceased was, at the time of the accident, employed by the defendants to drive a tractor and lorry, do pick and shovel work and other odd jobs. The defendants were doing contracts for the Government on two sites. On 31st August, 1941, the deceased received orders over the telephone to take a lorry to meet a convoy on the Great North Road. It occurred to him that he might go on that journey in his father's car, and he did so. He used his employers' petrol and lubricating oil, and while on the way to meet the convoy he met with the accident as a result of which he was killed. His employers had not authorised the use of his father's car, and did not know of it until after the accident. It was contended for the plaintiff that the doctrine of *respondeat superior* applied to make the defendant company liable. For the defendants, it was argued, *inter alia*, that the deceased, in using his father's car instead of the company's lorry as ordered, had changed his journey from an authorised to an unauthorised journey.

HILBERY, J., said that he was unable to take that view. The journey remained a journey solely for the purposes of the defendant company's business. It was well settled (1) that to make the master responsible for the act of his servant the act must be in the course of the employment (*Turberville* v. *Stamp* (1697), 1 Ld. Raym. 264), and (2) that where the servant was acting in the scope of his employment he made the master liable for his acts even if they were contrary to orders (*per* Kelly, C.B., in *Bayley* v. *Manchester Rly.* (1873), L.R. 8 C.P. 148; and *Limpus* v. *London General Omnibus Co.* (1862), 1 H. & C. 526). The principle was that where a servant did an act which was authorised under certain circumstances and conditions, and did it in an unauthorised and improper manner, the master was liable. His lordship respectfully adopted the language of Lord Phillimore in *Goh Choon Seng* v. *Lee Kim Soo* [1925] A.C. 550, at p. 554, and said that the deceased fell in the class of persons "doing some work which he is appointed to do, but does it in a way which his master has not authorised and would not have authorised had he known of it." His lordship expressed doubt in the present case whether the master would not have authorised the servant's act had he known of it. Judgment for the plaintiff for £3,500 under the Fatal Accidents Act, 1846 (£2,100 for the widow, £650 for the male child and £750 for the female child) and for £300 under the Law Reform (Miscellaneous Provisions) Act, 1935.

COUNSEL: *Paul E. Sandlands*, K.C., and *Arthur Ward*; *Norman Winning*.

SOLICITORS: *A. Neale Scorer & Co.*, Sheffield; *Brown, Jacobson & Hallam*, Nottingham.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

DIVISIONAL COURT.

Combex, Ltd. *v.* Cork N. Seals, Ltd.

Viscount Caldecote, L.C.J., and Tucker, J. 19th and 20th November, 1942.

Damages—Non-delivery of machine—Loss of use—Measure of damages—Formation of separate manufacturing company to use the machines—Agreement by sales company to take whole output—Loss of power to earn profits—Claim by sales company—Remoteness.

Appeal from a decision of Master Horridge.

The plaintiff sued the defendant for damages for breach of contract. Of the two items of damage in the statement of claim one was disposed of and one was disputed. The matter was referred to Master Horridge to assess damages. A Mr. Reich, who before the war had been a manufacturer in Germany of plastic articles such as combs and powder boxes, formed the plaintiff company to carry on a business in England, and made a contract with the defendant for the supply of two Eckert and Ziegler machines in November, 1939. He told the defendant his general ideas of business, and asked him to keep the machines until he should get the factory ready which he was proposing to erect. In fact the factory was not ready until May, 1940. The defendant, however, assured the plaintiff in January, 1940, that the machines would be ready on 10th February. After the machines were delivered it was found that a heating cylinder (*inter alia*) was missing, and at about the time when the machines were going to be used, an order was given to an engineering firm to supply a heating cylinder. The disputed

claim for damages which came before Master Horridge was one for loss of profits by reason of the loss of the use of the machine for twenty-four weeks at £37 10s. per week, i.e., £900. The learned master heard evidence (*inter alia*) about the formation of another company, Plasmics, Ltd., managed by the same Mr. Reich, but formed as a matter of convenience for the manufacture of the articles. The machines were sold to Plasmics, Ltd., at cost price on 22nd May, 1940, and the output of Plasmics, Ltd., had to be delivered at an agreed price between the two companies, which allowed a profit of about 33⅓ per cent. to Plasmics, Ltd. The whole of the dispute before the court related to the claim by the plaintiff company for damages "by reason whereof the plaintiff lost the use of the machines with the profits thereon for twenty-four weeks. The learned master held that no damages had been suffered, because (1) the plaintiff company had not suffered the damage, if any, which had resulted from the breach of contract; (2) the plaintiff company could have ordered another heating cylinder earlier; and (3) no damage had been proved. Ground No. (2) was disproved in the Divisional Court by the production of documents with the respondent's consent. The plaintiff appealed, and Master Horridge's view on (2) and (3) was upheld.

VISCOUNT CALDECOTE, L.C.J., said that the terms of the agreement for the sale of the machines to Plasmics, Ltd., were left vague. There could be no doubt that having sold the machines they parted with their power to make profits, and the fact that Plasmics, Ltd., was under the same management as the plaintiff company did not affect the position. The plaintiff company secured some sort of right to the goods, but the evidence as to this was vague. The agreement was not produced, and it was said that it might have been destroyed in the "blitz." Mr. Reich had said that 33⅓ per cent. of the gross profits had to go to Plasmics, Ltd. It was merely stated that the reason for forming the two companies was one of convenience. If his lordship were to speculate he would be inclined to think that they were formed for profit. Plasmics, Ltd., were to operate the machines and not the appellant. It was said that the appellant had this contract with Plasmics, Ltd., to acquire the whole of the putput at a price which would enable the appellant to make a large profit. The evidence however fell far short of what was required to establish this, and it was only by reason of arrangements into which Plasmics, Ltd., was pleased to enter that Combex, Ltd., could make profits at all. Even if the evidence was sufficient, the damage on the basis of the profits which Combex, Ltd., would have made were too remote. The profit at any time depended on the willingness of Plasmics, Ltd., to hold themselves bound to deliver the whole of the product. Even upon an assumption of the facts of the case in favour of the appellant, these were not damages naturally resulting from the breach of contract according to the usual course of business within the first rule in *Hadley* v. *Baxendale*. There was no notice of special circumstances which would enable the appellant to earn large profits, such as in this case approximately twice the value of the machine itself. The cases on the question of the extent to which loss of profits could be made the basis of a claim for loss of use were not easy to reconcile. There was some foundation in the text-books for the proposition that in proper cases loss of profit might be a measure of damages, but it might be that when the circumstances of cases in which loss of profit was awarded were taken into account it would appear that there was notice of special circumstances. In *Sunley (B.) & Co.* v. *Cunard White Star, Ltd.* [1940] 1 K.B. 740, at p. 747, the Court of Appeal in its considered judgment stated that the cases cited were "no authority for the proposition that, if the owner of a profit-earning chattel does not prove the loss he has sustained, the judge may make a guess in the dark and award him some arbitrary sum." It was quite true that where there has been another and proper alternative basis on which damages could be based, the court has chosen it. The only alternative which he (his lordship) could think of was the difference between the value of the machine at the date of actual delivery and the date when it should have been delivered. There was no evidence as to this, possibly because the machine had become more valuable at the date of actual delivery. The appeal would be dismissed.

TUCKER, J., said that it was alleged that the appellant had lost the use of the machine and the profits accruing therefrom. He had not in fact lost the use of the machine as a result of the breach of contract, as he had parted with possession of the machine to another legal entity. A claim of this sort should be supported by evidence as to the exact relationship between the two companies. It was extremely doubtful whether in circumstances such as these a loss of profit at the rate of £900 in twenty-four weeks could be established. It was difficult to say that the vendor of the machinery should contemplate that the new factory when set up must necessarily use the machine so as to make profit-making inevitable. The appeal must be dismissed.

COUNSEL: *R. F. Levy*, K.C., and *Gahan*; *Le Quesne*, K.C.; *Harold Simmons* and *Maurice Share*.

SOLICITORS: *Alexander Rubens & Co*; *Leader, Henderson & Leader*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 2385. **Apparel and Textiles** Order, 1942. Gloves (No. 4) Directions, Nov. 26.

E.P. 2443. **Building and Civil Engineering Labour** (Returns) (No. 3) Order, Nov. 30.

No. 2405. **Chartered and Other Bodies** (Temporary Provisions). Drainage Authorities (Extension of Term of Office) Order in Council, Nov. 24.

E.P. 2434. **Consumer Rationing** (No. 16) Order, Nov. 24.

E.P. 2438. **Control of Fuel** Order, 1942, General Direction (Central Heating and Hot Water Plants) No. 1. Permit, Nov. 23.

E.P. 2439. Control of Fuel Order, 1942, General Direction (Central Heating and Hot Water Plants) No. 2. Permit, Nov. 23.

E.P. 2400. Control of Motor Fuel Order, Nov. 23.

E.P. 2404. **Defence** (Agriculture and Fisheries) Regulations, 1939. Amendment Order in Council, Nov. 24.

E.P. 2407. Defence (Finance) Regulations, 1939. Order in Council, Nov. 24, amending reg. 9.

E.P. 2403. Defence (General) Regulations, 1939. Order in Council, Nov. 24, amending reg. 52 and adding regs. 28B (Interference with water, pipes, etc., used for fire fighting), 55E (Sale of controlled articles in execution of diligence in Scotland), 60CA (Power by order to regulate certain matters for purposes of Fertilizers and Feeding Stuffs Act, 1926) and 60P (Church door notices dispensed with).

E.P. 2448. **Finance.** Importation of Notes (Exemptions) Order, Dec. 1.

E.P. 2397. **Fire Prevention** (Government Premises) (No. 2) Order, Nov. 23.

E.P. 2415. **Food Transport** (Bread) (G.B.) Directions, Nov. 25.

E.P. 2446/S.64. **Horticultural Cropping** (Scotland) Order, Oct. 20.

E.P. 2432. **Industry** (Records and Information) and Inspection of Premises (No. 1) Order, Nov. 27.

E.P. 2450. Industry (Records and Information) (No. 3) Order, Nov. 30.

E.P. 2430. **Limitation of Supplies** (Heating Apparatus) Order, Nov. 27.

E.P. 2431. Limitation of Supplies (Polishes) Order, Nov. 27.

E.P. 2420. **Navigation** Order No. 20, Nov. 24.

E.P. 2445. **Quarries** (Opencast Coal Workings) (No. 2) Order, Nov. 27.

E.P. 2380. **Railways.** Transport of Straw Direction, Nov. 20.

E.P. 2451. **Sampling of Food** Order, 1942. Amendment Order, Nov. 30.

No. 2447/S.65. **Session, Court of Scotland,** Procedure. Act of Sederunt, Nov. 13, anent free legal aid in the Court of Session to members of His Majesty's Royal Air Force.

No. 2429. **War Damage** (Appeals and References to Referees) (Northern Ireland) Rules, Nov. 12.

No. 2259. **War Pensions and Detention Allowances** (Amendment) Scheme, Nov. 25.

No. 2406. **Welsh Church** (Temporalities) Act, 1919. Order in Council, Nov. 24, continuing the Powers of the Commissioners of Church Temporalities in Wales until Dec. 31, 1943.

Rules and Orders.

S.R. & O., 1942, No. 2357/L. 36.

SOLICITOR, ENGLAND.

THE SOLICITORS COMPENSATION FUND RULES, 1942, DATED JUNE 5, 1942, MADE BY THE COUNCIL OF THE LAW SOCIETY UNDER SECTION 2 OF THE SOLICITORS ACT, 1941 (4 & 5 GEO. 6. c. 46).

1. These Rules may be cited as the Solicitors Compensation Fund Rules, 1942, and shall come into force on the date on which section 2 of the Solicitors Act, 1941, comes into force.

2.—(1) In these Rules "loser" means a person who has sustained loss in consequence of dishonesty on the part of any solicitor or any clerk or servant of any solicitor in connection with any such solicitor's practice as a solicitor or any trust of which such solicitor was a trustee and whether or not he had a practising certificate in force when the act of dishonesty was committed and notwithstanding that subsequently to the commission of that act he may have died or had his name removed from or struck off the Roll or may have ceased to practise or been suspended from practice.

(2) Other expressions used in these Rules have the meanings assigned to them by the Solicitors Acts, 1932 to 1941.

(3) The Interpretation Act, 1889, applies to these Rules as it applies to an Act of Parliament.

3. Before or at the time of making an application to the Council for a grant out of the Compensation Fund a loser shall complete sign and deliver to the Secretary a notice in the form A set out in the Schedule hereto or in a form to the like effect approved by the Council.

4. Every such notice shall be delivered to the Secretary within six months (or such other period not exceeding two years as the Council may allow in any particular case) after the loss in respect of which the notice is delivered first came to the knowledge of the loser.

5. Every such notice shall be accompanied by an application for a grant out of the Compensation Fund except where it is impracticable to deliver the application with the notice in which case the application shall be delivered to the Secretary as soon as practicable after the delivery of the notice.

6. Every application shall be made by delivering a statutory declaration in the form B set out in the Schedule hereto or in a form to the like effect approved by the Council.

7. The Council may require an application to be supported by oral evidence to be tendered and documents to be produced to them or any committee appointed and authorised by them to exercise or to assist them in the exercise of their functions under section 2 of the Solicitors Act, 1941.

8. The Council may before deciding whether or not to make a grant out of the Compensation Fund require in respect of any application the pursuit of any civil remedy which may be available in respect of the loss or the institution of criminal proceedings in respect of the dishonesty leading to the loss or the making of an application to the Disciplinary Committee.

9. The Council may waive any of the provisions of these Rules in any particular case or permit the amendment in any respect of any notice or application.

10. Any requirement of the Council under these Rules may be communicated by a notice in writing which may be delivered personally or sent by post to the addressee at his last known address. Any such notice sent by post shall be deemed to have been received by the addressee within forty-eight hours of the time of posting.

Dated this fifth day of June, 1942.

Dennis H. Herbert,
President.

SCHEDULE.

FORM A (FORM OF NOTICE OF LOSS).

To The Law Society.

TAKE NOTICE that (*a*).....
of.....
(hereinafter called " the loser ") has sustained a loss of approximately £.....due to the dishonesty of (*b*).....
or (*c*) his/their clerk(s) or servant(s).

AND TAKE NOTICE FURTHER that (*c*) the particulars relating thereto are set out in the application which accompanies this notice ;

(or)

(*d*) the particulars relating thereto are briefly set out in the schedule hereto and that in respect of this loss an application for a grant may be made in due course.

SCHEDULE. (*e*)

PARTICULARS.

[The following information should be given concisely :—

(1) The name and address of the person on whose part dishonesty is alleged.

(2) The circumstances in which and the date or dates upon which the money or other property in respect of which the loss is alleged to have been sustained came into the possession of the solicitor, clerk or servant.

(3) The facts relied upon in support of the allegation of dishonesty.

(4) What steps, if any, have been or will be taken (A) to pursue any civil remedy in relation to the circumstances of the loss and (B) to institute any criminal or disciplinary proceedings in respect of the alleged dishonesty.

(5) The date upon and the circumstances in which the loss first came to the knowledge of the loser.

(6) The name and address of any solicitor instructed or proposed to be instructed on behalf of the loser.

(7) Any other relevant particulars.]

(Signed).....

(Dated).....

(*a*) Insert the full names and address of the loser.

(*b*) Insert the name of the solicitor or firm of solicitors concerned.

(*c*) Strike out if no clerk or servant is concerned.

(*d*) Strike out whichever of the two alternative paragraphs does not apply.

(*e*) If this form is accompanied by an application on Form B this Schedule should be left blank.

FORM B.

(FORM OF APPLICATION FOR A GRANT OUT OF THE COMPENSATION FUND.)

To The Law Society.

I, (*a*).....
of.....
hereby apply to the Council of The Law Society that in the exercise of the absolute discretion conferred upon them by the Solicitors Act, 1941, they may make to me a grant of £.....or such other sum as they may think proper out of the Compensation Fund, for the purpose of relieving or mitigating a loss sustained by reason of the dishonesty of [(*b*).....,
of (*c*).....,the clerk(s) or servant(s) of] (*d*).....of
(*c*).....,a solicitor or firm of solicitors, of which loss notice was delivered to The Law Society on the.....day of.....19....
and full particulars of which appear in the Schedule hereto.

SCHEDULE.

PARTICULARS.

[Here state concisely in numbered paragraphs showing the declarant's means of knowledge :—

(1) the circumstances in which and the date or dates upon which the money or other property in respect of which the loss has been sustained came into the possession of the solicitor, clerk or servant, and full particulars of such money or property ;

(2) the facts relied upon in support of the allegation of dishonesty ;

(3) the date upon and the circumstances in which the loss first came to the knowledge of the loser ;

(4) particulars of any relevant documents which can be produced in support of this application ;

(5) whether to the knowledge of the declarant any other application is likely to be made in respect of the facts set out in this application and if so by whom ;

(6) whether any civil, criminal or disciplinary proceedings have been taken in respect of the facts set out in this application ; if so, with what result ; if not, what proceedings, if any, it is proposed to take ;

(7) the name and address of any solicitor instructed on behalf of the loser ;

(8) any other relevant particulars.]

I solemnly and sincerely declare that the information given by me in this application is true to the best of my knowledge and belief and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

Declared etc.

(*a*) Insert full names and address.

(*b*) Insert name of clerk or servant concerned (if any) ; if the dishonesty is that of a solicitor strike out the words in square brackets.

(*c*) Insert full address.

(*d*) Insert name of solicitor or firm of solicitors concerned.

S.R. & O., 1942, No. 2309/L.35.

COUNTY COURT, ENGLAND—COURTS AND DISTRICTS.

THE COUNTY COURT DISTRICTS (WINCHCOMB) ORDER, 1942.

DATED NOVEMBER 7, 1942.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by Section 2 of the County Courts Act, 1934,* and all other powers enabling me in this behalf, do hereby order as follows :—

1.—(1) The holding of the Winchcomb County Court shall be discontinued and the district of that Court shall be consolidated with the district of the Cheltenham County Court.

(2) The Cheltenham County Court shall have jurisdiction as respects proceedings commenced in the Winchcomb County Court before this Order comes into operation.

2. This Order may be cited as the County Court Districts (Winchcomb) Order, 1942, and shall come into operation on the 1st day of December, 1942, and the County Court Districts Order, 1938,† shall have effect as amended by this Order.

Dated this 7th day of November, 1942.

Simon, C.

---

* 24 & 25 Geo. 5, c. 53. † S.R. & O., 1938 (No. 470) I, p. 706.

Notes and News.

Notes.

Mr. Stephen Gerald Howard has been elected a Bencher of Lincoln's Inn in place of the late Sir Rowland Whitehead, K.C.

At the monthly meeting of the directors of the Solicitors Benevolent Association held at 60, Carey Street, W.C.2, on the 2nd December, 1942, grants amounting to £1,727 3s. 1d. were made to forty-four beneficiaries.

The Financial Secretary to the Treasury has presented a White Paper to Parliament showing that war damage payments under Pt. I of the War Damage Act during the period to 31st March, 1942, amounted to £45,280,375. Receipts under this part of the Act in contributions collected by the Inland Revenue amounted to £34,627,566.

At the first meeting of the newly-elected committee of The Incorporated Law Society of Liverpool held on Tuesday, 1st December, the following officers were elected for the ensuing year :—

President, Mr. Roland Marshall ; Vice-President, Mr. Joseph Roberts ; Hon. Treasurer, Mr. Hugh Berenger Kendall ; Hon. Secretary, Mr. Alfred Williamson Brown.

WAR DAMAGE COMMISSION AND MORTGAGE REPAYMENTS.

The War Damage Commission has recently arranged a procedure with respect to payments under s. 8 (3) of the War Damage Act, 1941 (payments in what are now generally known as " hardship cases "), which is proving of considerable benefit to the owners of houses which have been destroyed and on which there is a mortgage (or, in Scotland, bond) outstanding.

The amount which can be advanced by the Commission under s. 8 (3) towards the purchase of alternative accommodation is limited (subject in each case to the maximum of £800) to such amount as can be paid without prejudice to the mortgagee (lender), to whom, under the terms of the Act, the value payment has to be paid. The lender then hands over to the borrower any balance remaining after the mortgage debt has been liquidated. The effect of this is that in an extremely large number of cases the sum of money which can be advanced to the borrower without prejudice to the lender would be entirely inadequate for the purpose of purchasing new accommodation in place of his destroyed home.

Under the new procedure, in which building societies and mortgagees generally are co-operating, arrangements are made by the Commission with the claimant and the mortgagee (in Scotland, bondholder) whereby the latter will accept whatever may be his share of the " hardship payment " towards the redemption of the old mortgage and grant a new mortgage to the claimant for a similar (or greater) amount, thus in effect making available towards the provision of alternative accommodation the full sum which the Commission is able to advance under the provisions of the Act.

The scheme is, of course, of especial benefit to the smaller house owner, and many have already taken advantage of it. The Commission is itself reviewing all past applications for advances which could not be met ; if it seems likely that the new procedure will enable an advance to be made, the applicant is being advised accordingly.

Wills and Bequests.

Mr. Thomas Charles Hurley, solicitor, of Llandilo, left £34,762, with net personalty £33,264.

The Rt. Hon. Sir Charles Henry Sargant, a Lord Justice of Appeal from 1923 to 1928, left £39,514 (net personalty £33,033). He left, subject to a life interest, £500 to New College, Oxford.

Mr. Charles Henry Wells, solicitor, of Sudbury, Suffolk, left £32,470, with net personalty £30,258. He left £1,000 to the Chancellor of the Exchequer towards the war.